IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b)

Description of Case

Crl. Misc. Appl. No. 372 of 2005

Date of Decision:-15.6.2005

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Dated:- 15.6.2005 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 372 of 2005

Arvind Nigam S/o late K.K. Nigam
R/o 215-B, Pardevan Pur,
Lal Bangla, Kanpur, U.P. .....Applicant

Versus

1. State of Uttaranchal
2. Smt. Rashmi
   W/o Sri Arvind Nigam
   D/o Sri Anand Krishan Srivastava
   Presently R/o H-7 Anandoutsav Ashram
   Haripur Kalan, P.S. Raiwala
   District Dehradun .....Respondents

Hon'ble J.C.S. Rawat, J.

This petition under section 482 Cr.P.C. has been filed against the order dated 17.2.2005 passed by Addl. Family Judge, Rishikesh, District Dehradun in case No.22/2004 under section 125 Cr.P.C.

It has been alleged in the petition that the respondent No.2-Smt. Rashmi has filed petition under section 125 Cr.P.C. against the present applicant in the court of Addl. Family Judge, Rishikesh, District Dehradun. After registration of the case, summons were sent to the applicant and the applicant filed his objection on 6.4.2005. During the hearing of the case, an application was given to the effect that the court has got no jurisdiction to hear the applicant. After hearing the parties on the point of jurisdiction. The said application was rejected by the Addl. Family Judge, Rishikesh, District Dehradun vide its order dated 17.2.2005.

The main controversy involved in the present case before me is that whether Dehradun court has got the jurisdiction to decide the case or not. The learned counsel for the applicant contended that the applicant and respondent No.2 are the permanent resident of Kanpur, U.P. and the marriage took place between them

in Kanpur itself. The applicant is still settled and assisting his brother in running a General Merchant Shop at Kanpur. The respondent No.2 is still residing with her parents at Kanpur. The learned counsel for the applicant has also filed voter-list of Kanpur constituency showing the name of the respondent No.2. The learned counsel for the applicant further contended that the respondent No.2 filed the petition under section 125 Cr.P.C. in the court of Dehradun in order to harass the applicant. It has been alleged that she has given false address and she is not residing with her uncle & aunt at Dehradun. The learned A.G.A. refuted the contention. It has been alleged at para 10 of the complaint filed under section 125 Cr.P.C. that the respondent No.2 is residing at the house of her uncle & aunt at Dehradun since December 2002. The jurisdiction of the petition is to be considered at this stage on the basis of the allegations made in the complaint. The allegations made in the complaint clearly shows that the respondent No.2 resides within the jurisdiction of Dehradun.

Section 126 of Cr.P.C. sub clause (1) provides that "*Proceedings under section 125 may be taken against any person in any district-*

a). where he is, or

b). where he or his wife resides, or

c). where he last resided with his wife, or as the case may be, with the mother of the illegitimate child."

Perusal of the above provisions clearly reveals that the complaint under section 125 Cr.P.C. can be filed in any place where the applicant is residing at the time of filing of the complaint.

Now the question raise in this petition that whether the temporary residence comes within the definition of word 'reside'.

The Hon'ble Supreme Court has held in Mst. Jagir Kaur and another Vs. Jaswant Singh AIR 1963 S.C.p./1521 (V 50 C 223) as under-

> *"The third expression is the word "is". It is inserted between the words "resides" and "last resided". The word, therefore, cannot be given the same meaning as the word "resides" or the expression "last resided" bears. The meaning of the word is apparent if the relevant part of the sub-section is read. It reads : "Proceedings under this section may be taken against any person in any district where he…….is….." The verb "is" connotes in the context the presence or the existence of the person in the district when the proceedings are taken. It is much wider than the word "resides": it is not limited by the animus manendi of the person or the duration or the nature of his stay. What matter is his physical presence at a particular point of time. This meaning accords with the object of the chapter wherein the concerned section appears. It is intended to reach a person, who deserts a wife or child leaving her or it or both of them helpless in any particular district and goes to a distant place or even to a foreign country, but, returns to that district or a neighboring one on a causal or a flying visit. The wife can take advantage of his visit and file a petition in the district where he is during his stay. So too, if the husband who deserts his wife, has no permanent residence, but is always on the move, the wife can catch him at a convenient place and file a petition under S.488 of the Code. She*

may accidentally meet him in a place where he happens to come by coincidence and take action against him before he leaves the said place. This is a salutary provision intended to provide for such abnormal cases. May illustrations can be visualized where the utility of that provision can easily be demonstrated."

The learned counsel for the applicant referred the decision of the Hon'ble Supreme Court in **Aluri Raji Reddi Vs. State of Delhi 2004(4) C.C.S.C. p/1167,** in which the husband and wife were living in Andhra Pradesh. After some time, wife left her husband and she was living with her parents in the same State i.e. Andhra Pradesh. Thereafter, the wife was living with her brother at Delhi, where she filed a complaint under section 125 Cr.P.C. against her husband. While transferring the case from Delhi to Andhra Pradesh, the Hon'ble Supreme Court has observed that it would be better convenience of the parties to contest the case Andhra pradesh. As such the case was transferred. Since, the word 'reside' was not taken into consideration in the aforesaid case, hence the said case is not applicable to the instant case. The aforesaid decision is not applicable in this case.

Learned A.G.A. contended that voter-list and other papers filed by the applicant cannot be considered at this stage and the High Court while acting under section 482 Cr.P.C. cannot act upon the documents annexed with this petition. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. { **State of M.P. Vs.**

Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}. The question whether the respondent No.2 is residing at Dehradun or Kanpur is to be decided by the trial court.

The aforesaid question was also raised before the court below but without taking any evidence the application under section 125 Cr.P.C. has been disposed of. In view of the above, the court below shall decide this issue at the time of final hearing of this case after recording the evidence.

The petition is disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 15.6.2005

LSR